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## Judiciary Committee

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### HB 2356

**Title:** An act relating to the liability of owners of recreational land.

**Brief Description:** Modifying provisions with regard to recreational activities on certain lands.

**Sponsors:** Representative Williams.

Brief Summary of Bill
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| <ul style="list-style-type: none"><li>• Allows landowners to charge access fees and still retain immunity for all but intentional harm done to recreational users so long as the fees are used for land management.</li></ul> |
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**Hearing Date:** 1/11/06

**Staff:** Bill Perry (786-7123).

**Background:**

The Legislature has changed the common law on the liability of landowners for injuries incurred by certain recreational users of land. In specified cases, a statute provides that landowner liability exists only for intentional harm.

At common law, on the other hand, a landowner may be liable for unintentionally causing harm through acts of negligence, gross negligence, or recklessness, as well as through intentional acts. A landowner's liability at common law depends in part on the status of the injured party. That is, a landowner's duty to a particular person varies depending on whether the person is, for instance, a trespasser or an invitee. Generally, a landowner's duty to a trespasser is only to refrain from willfully or wantonly injuring the person, while the duty owed an invitee is to use ordinary care to keep the property reasonably safe.

A statute prescribes a different rule in the case of a landowner who allows members of the public to use his or her land for certain recreational purposes. This statutory provision applies to both private and public landowners. Generally, if a landowner allows the public to use the land for recreational purposes without charge, then the landowner is liable only for injuries that the landowner intentionally causes. This insulation from liability does not apply to an injury caused by a "known dangerous artificial latent condition" when the landowner has not posted conspicuous warning signs. In order for this exception to apply, the landowner must first have had actual knowledge of an artificial condition that is not readily apparent to a recreational user and that presents an unreasonable risk of harm, and then the land owner must have failed to post a warning.

The statute insulating landowners from liability applies to "outdoor recreation" including, but not limited to, certain specified activities. The specified activities are:

- gathering firewood;
- hunting, fishing, clam digging;
- camping, picnicking;
- swimming, hiking, bicycling;
- riding horses or other animals;
- driving off-road vehicles, snowmobiles, and other vehicles;
- boating and water sports;
- winter sports;
- nature study;
- viewing historical, archaeological, scenic, or scientific sites;
- skateboarding and other nonmotorized wheel-based activities; and
- hanggliding and paragliding.

The insulation from liability is generally not available if a fee of any kind is charged to users of the land, except that landowners are specifically allowed to charge a fee of up to \$25 for cutting, gathering, and removing firewood. In addition, a license or permit issued for statewide use under the fish and wildlife or recreational lands statutes is not considered a fee for purposes of the recreational use immunity statute.

**Summary of Bill:**

Public and private land owners are allowed to charge certain land management fees for recreational use of their lands without losing the immunity from liability granted by the Legislature. The fees may not exceed \$10 per person per day, or \$350 per person per year. Fees must be used to pay for land management costs reasonably related to providing recreational access to the land. Such costs are limited to:

- road maintenance;
- waste removal;
- fee collection;
- enforcement;
- maps and brochures; and
- repair and maintenance of gates, signs, trails, and access support facilities.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.